



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rockwell International Corporation--Claim
for Costs
File: B-222534.2
Date: November 18, 1986

DIGEST

1. Allegation that solicitation for the Trident Sonar Maintenance Trainer--Front End Simulator (TSMT FES) which will be used to train sonar technicians for Trident submarines was issued solely as a full scale design and development effort is without merit where solicitation not only required offerors to design and develop the TSMT FES but also to fabricate and install a production unit approximately 24 months after contract award.
2. Allegation that agency improperly evaluated the risk that the protester would not meet the agency's delivery schedule because risk was not stated as an evaluation factor is denied since risk is clearly a relevant consideration in evaluating an offeror's capability and approach and where technical approach is the most important evaluation factor, risk of performance and of meeting solicitation's delivery schedule is sufficiently correlated to the offeror's technical approach so as to put offerors on notice of its application.
3. Protest that agency should have advised offerors that agency believed that retained hardware and software was necessary in order to meet the solicitation's delivery schedule is without merit where agency's actual requirements, including the delivery dates which were to be met, were clearly stated since it was incumbent on offerors to propose a technical approach which would satisfy all contract requirements.
4. Allegation that meaningful discussions were not held is denied where agency's main concern was whether protester could meet the solicitation's delivery schedule and where agency specifically requested protester during negotiations to indicate how it would meet the schedule.
5. Claim for costs is denied where record shows that protester was not denied a fair opportunity to compete for this requirement since there has been no showing that protester was unreasonably excluded from the competition.

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6. Claim for costs based on alleged errors in agency's technical evaluation is denied where record fails to show that protester was unreasonably excluded from the competition and where there is no showing that if the alleged evaluation errors were corrected, that there is a substantial likelihood that protester would receive the award.

DECISION

Rockwell International Corporation (Rockwell) requests reimbursement of its proposal preparation expenses and costs of filing and pursuing its protest under request for proposals (RFP) No. N66604-85-R-0001 issued by the Department of the Navy for the design, development and fabrication of the Trident Sonar Maintenance Trainer--Front End Simulator (TSMT FES). The TSMT FES is an electronic device, incorporating computer processors, software and hardware and will be used to train sonar technicians for Trident submarines. Rockwell alleges that the Navy's technical evaluation did not conform to the RFP's evaluation criteria, that the Navy miscalculated Rockwell's proposal and that the Navy failed to conduct meaningful discussions.

We deny the claim.

The solicitation was issued on June 28, 1985 with an amended closing date of August 29, 1985. The RFP called for the design, development, installation and testing of one TSMT FES engineering development model (EDM) and the fabrication, testing, delivery and installation of two production units. In addition, the RFP had options for the delivery of five more production units. Award of a cost-plus-fixed-fee contract was contemplated and the evaluation factors for award, in descending order of importance, were as follows:

- Technical Approach
- Corporate Experience
- Management Approach
- Facilities
- Cost

Technical Approach was paramount in importance, approximating the weight of both Corporate Experience and Management. Cost was the least important factor, although its importance would increase with the degree of equality between the proposals. The RFP advised offerors that award would be made to the offeror, whose offer, conforming to the solicitation, is determined most advantageous to the government, cost and other factors considered.

The Navy received proposals from Raytheon Company and Rockwell by the specified closing date. A Source Selection Evaluation Board was convened and the initial technical proposals were evaluated. Also, the offerors' cost proposals were forwarded to the Defense Contracting Audit Agency for review. Based on the initial evaluations, the Navy's contract negotiator requested clearance to conduct negotiations with both Raytheon and Rockwell. Approval was granted by the Office of Navy Acquisition Strategy on January 28, 1986 subject to the condition that the relative importance of cost be increased. Subsequently, amendment No. 0002 was issued advising offerors of this change and indicating that cost would now be weighted as slightly more important than corporate experience and would approximate 20 percent of the overall evaluation.

By letters dated January 29, 1986, both Raytheon and Rockwell were informed that they were in the competitive range and were provided with a listing of deficiencies which would be discussed. The Navy identified 13 deficiencies and questions for discussion with Raytheon, while Rockwell was requested to address a total of 64 specific statements of technical concern. Discussions were held and both offerors were requested to submit best and final offers (BAFOs). The final weighted technical scores were as follows:

	Raytheon	Rockwell
Technical Approach	32.23	19.97
Corporate Experience	12.76	11.48
Management Approach	12.18	8.02
Facilities	<u>4.13</u>	<u>3.88</u>
TOTAL (80)	61.3	43.35

In addition, the Navy's cost realism analysis showed that, although Rockwell's proposed costs were approximately 33 percent less than Raytheon's, Rockwell had substantially underestimated the level of effort required to perform its technical approach in accordance with the RFP. The Navy increased Rockwell's proposed costs by approximately \$3 million and as a result, the Navy's evaluated costs for both Raytheon and Rockwell were approximately \$13 million, with Rockwell slightly higher than Raytheon.

The Navy determined that the technical difference between the Raytheon and Rockwell proposals was significant and in view of the fact that there was an estimated cost saving by awarding to Raytheon, the Navy concluded that Raytheon's proposal offered the greatest value to the government. On April 21, 1986, a notice of award was sent to Raytheon.

Rockwell initially protested this decision to our Office alleging that the two proposals were technically comparable and that Rockwell should have been awarded the contract based on its low cost. The Navy conducted a debriefing and thereafter, Rockwell supplemented its protest. A determination to proceed, notwithstanding the protest, was issued due to urgent and compelling circumstances significantly affecting the interests of the United States. In view of the award decision, Rockwell requested that we only consider whether the Navy's actions in this procurement entitle the firm to recover its costs associated with the protest.

Technical Evaluation

The most significant difference identified by the Navy between the two technical proposals was Raytheon's approach of using already designed, built and tested modules and equipment for the TSMT FES. Since Raytheon's proposed design was based on existing production systems, the Navy found that there was very little risk that the tight delivery schedule set forth in the RFP would not be met. The solicitation required offerors to design, develop, install and test an EDM of the TSMT FES and also deliver and install a TSMT FES production system within an estimated 24 month period and the Navy found that there was a strong likelihood that Raytheon would deliver a production TSMT FES on schedule. On the otherhand, Rockwell had developed a prototype system, which in the Navy's view, would require substantial modification in order to meet the program objectives. The Navy concluded that this approach was significantly weaker than Raytheon's because it introduced a substantial element of risk as to whether the RFP's delivery schedule would be met. For example, the Navy found that no hardware and only 10 percent of the software proposed by Rockwell was available at contract award, while in comparison, Raytheon had a significant percentage of the software it proposed to utilize already developed and available. Consequently, the Navy had serious reservations as to whether Rockwell could deliver a production TSMT FES on time and its technical approach was downgraded for this reason.

In addition, the Navy found Raytheon's corporate experience and management approach better than Rockwell's. Raytheon had previously designed multiple-array sonar trainers for the Navy of the type being procured and its past efforts allowed the firm to become familiar with the sophisticated AN/BQQ-6 sonar system utilized on the Trident submarines. Because of Raytheon's extensive background in sonars and sonar trainers, Raytheon's corporate experience was judged to be very good. Rockwell was found to possess a sound background in sonar

systems but did not exhibit the in-depth degree of experience in multiple-array/multi-target sonar trainers possessed by Raytheon. Concerning each offeror's management approach, the Navy initially found both management approaches sound, although Rockwell's score was subsequently reduced based on its response to meeting the RFP's delivery schedule.

The Navy also conducted a cost realism analysis of each offeror's proposed costs. Raytheon's best and final offer of \$13,262,003 was accepted as realistic. Rockwell's proposed cost of \$9,969,000 was increased substantially by the Navy to adjust for the realistic number of manhours the Navy deemed necessary for performance during the first 24 months of the program. The Navy further concluded that the products provided by Rockwell after 24 months would not be totally compliant and that an additional 10 months of development time would be needed by Rockwell to deliver a TSMT FES which would fully satisfy the Navy's program requirements. Based on these two determinations, Rockwell's realistic cost for evaluation purposes was determined to be \$13,637,452.

Overall, Raytheon's technical proposal was rated "very good" while Rockwell's technical rating was "average." The Navy indicates that, even based on each offeror's proposed costs, Raytheon's technical superiority was so superior as to justify the award to Raytheon despite the proposed cost difference. After incorporating its cost realism analysis, the Navy argues that Raytheon's proposal clearly offered the greatest value to the government.

Conformity with Stated Criteria

Rockwell alleges that the solicitation failed to advise offerors of the Navy's actual needs and of the actual basis on which the Navy evaluated proposals. Rockwell argues that the RFP was issued for a full scale design and development effort and that it submitted its offer proposing a new design for the TSMT FES on that basis. Rockwell contends, however, that the Navy's actual evaluation shows that the Navy was not interested in obtaining a new design and in fact believed that any offeror proposing such an effort could not produce a satisfactory product within the time schedule set forth in the RFP. In this respect, Rockwell states that the Navy had developed a government schedule estimate which indicated that approximately 22 months were required after the critical design review of the developmental model to deliver the first production unit. Since the RFP allotted only 24 months from design to production, Rockwell argues that the Navy should have advised offerors that in reality only a limited development period of 2 months was available.

In addition, Rockwell complains that the RFP did not indicate in any way that retained hardware and software was required or even desirable. Rockwell contends that the Navy decided that because Rockwell did not have available significant amounts of retained hardware and software, it could not meet the RFP's delivery schedule and this constituted one of the Navy's major criticisms of Rockwell's proposal. Rockwell argues that the Navy failed to put it on notice that this would be considered and indicates that it never would have submitted a proposal based on a new design if it had been informed of the Navy's actual needs.

Overall, Rockwell argues that it submitted a technically sound, albeit new, approach for the design and development of the TSMT FES in accordance with the RFP's statement of work (SOW); but this approach was unfairly downgraded and considered risky because of Navy's actual needs for a TSMT FES which made extensive use of existing hardware and software.

Rockwell also argues that the Navy failed to apprise Rockwell of its serious technical concerns during discussions. Although the Navy requested Rockwell to respond to approximately 67 clarification requests, Rockwell contends that it was not advised that the Navy considered its approach too risky and also points out that the Navy's only inquiry concerning retained hardware and software was to request Rockwell to identify the amount of retained hardware and software which was being offered. In addition, Rockwell contends that it was never advised of the Navy's concern over Rockwell's proposed costs or level of effort. Rockwell argues that the Navy's clarification requested failed to communicate the Navy's real concerns and consequently the Navy failed to conduct meaningful discussions.

The Navy indicates that the RFP not only required a design and development effort, but also required the timely delivery of fully-tested and operational production units. The Navy argues that the RFP clearly called for fabrication and production of two TSMT FES production units and that the need for the timely delivery of these units was specifically emphasized in the solicitation. The RFP's delivery schedule required the first production unit to be delivered on or before "30 Apr. 88" and the RFP stated that offerors that proposed delivery that will not clearly fall within the required period specified will be considered nonresponsive and rejected. The Navy argues that the ultimate goal was to obtain two production systems and that Rockwell's allegation that it was misled into believing that the contract was only for design and development is without merit.

The Navy also argues that risk was clearly identified as an evaluation factor in the RFP and that it was appropriate for the Navy to consider risk in evaluating the proposals. The RFP stated that offerors shall "identify innovative techniques/approaches. . .and shall fully describe how he will minimize risks under the applicable category." The Navy contends that this put Rockwell on notice that risk would be considered and it was in this context that the Navy criticized Rockwell for utilizing little pre-existing, pretested hardware and software. The Navy contends that there never was a requirement that offerors propose existing hardware and software only that a credible technical and management approach be presented which would meet contract requirements by the required due dates. By offering untested hardware and software, the Navy contends that Rockwell introduced a substantial element of risk that the aggressive delivery schedule would not be met. In addition, the Navy points out that its own time estimates reflected the amount of time it believed an average offeror that had not completed extensive fabrication and testing of hardware and software would require and was not designed to predict the only possible schedule. The Navy argues that the RFP advised Rockwell of the agency's actual requirements and that proposals were evaluated in conformance with the RFP's stated criteria.

Also, the Navy argues that meaningful discussions were held and that the Navy's technical and cost concerns were conveyed to Rockwell. The Navy requested Rockwell to specify the exact amount of retained hardware and software which would be used because it suspected that little proven hardware and software had been proposed and the Navy argues that this question identified the Navy's concern in this area. Moreover, the Navy indicates that it specifically requested Rockwell to explain how it intended to meet the government's firm delivery schedule. In addition, the Navy states that it asked Rockwell whether any contingencies were factored into this cost proposal and whether sufficient labor hours were estimated to cover any problems that might arise during the development phase. The Navy argues that Rockwell's assertion that meaningful discussions were not held is not supported by the record and is therefore without merit.

It is well established that an agency may not evaluate technical proposals based on factors that prospective offerors were not advised would be considered. Quanta Sys. Corp., B-218974, Sept. 20, 1985, 85-2 CPD ¶ 312. A solicitation must be drafted in clear and unambiguous terms so as to inform all offerors of what is required and permit competition on an equal basis. Storage Technology Corp., et al., B-215336 et al., Aug. 17, 1984, 84-2 CPD ¶ 190. Here,

although the RFP did indicate that the contractor was to design and develop the TSMT FES, the solicitation also clearly required the delivery of 2 production units and required the first unit to be delivered within 24 months after contract award. We believe that the design and development portion of the work must be read in conjunction with the agency's stated need for the delivery of a production unit within the time frame set forth in the RFP and in our view, Rockwell's assertion that the RFP was issued solely as a full scale design and development effort is contradicted by the plain language of the RFP which not only solicited design and development but also fabrication, delivery, and installation of two TSMT FES production systems. Consequently, we disagree with Rockwell that the RFP reasonably establishes that the Navy was soliciting offers solely for a design and development effort.

Notwithstanding, we agree that performance was to include design and development and offerors were clearly advised that innovative techniques or approaches to meeting this task could be proposed. Although Rockwell argues that it was not advised that the Navy would evaluate risk associated with any new design approach submitted, we believe that it was appropriate for the Navy to consider the level of risk in each proposal since an agency may utilize evaluation factors not specifically stated where they are reasonably related to the stated criteria. In this respect, we have held that the element of risk is clearly a relevant consideration in evaluating an offeror's capability and approach.

Consolidated Group, B-220050, Jan. 9, 1986, 86-1 CPD ¶ 21.

The selection of a contractor which can best perform necessarily involves a choice between differing approaches and where, as here, an offeror's technical approach is identified as the most important evaluation factor, we find no basis for objecting to the evaluation of the risk of performance by the agency. The Navy clearly set forth in the RFP its required delivery schedule and we find that the risk in meeting that schedule is sufficiently correlated to the offeror's technical approach in carrying out all elements of the contract so as to put Rockwell on notice of its application.

Furthermore, we disagree with Rockwell that the solicitation was defective because it did not advise Rockwell that retained hardware and software was desirable for contract performance. Our decisions recognize that solicitation requirements must be free from ambiguity and describe the minimum needs of the procuring activity, but this does not mean that all elements of the requirement must be so precisely specified that offerors are provided no latitude in which offerors may perform. See Memorex Corp., B-212660, Feb. 7, 1984, 84-1 CPD ¶ 153. Here, we believe that the

Navy's actual requirements were clearly stated, including the delivery of a production unit in a timely manner and it was incumbent upon offerors to propose a technical approach which would meet all RFP requirements. We point out that the Navy did not find Rockwell's proposal technically unacceptable nor was its proposal rejected because it failed to offer an extensive amount of retained hardware or software. Rather, the Navy concluded that Raytheon's proposal, with a much greater percentage of retained hardware and software, was more advantageous to the government and offered greater assurances that the RFP's delivery schedule would be met. Rockwell was on notice of that schedule but simply failed to demonstrate to the agency that its approach, which made little use of existing hardware and software, would provide the Navy with a production TSMT FES at the time it was required to be delivered. While Rockwell contends that it would not have submitted a proposal if the Navy had even hinted that the schedule could not be met without extensive retained hardware and software, Rockwell was aware or should have been aware of the delivery schedule, yet submitted a proposal knowing that it had little existing equipment and that its approach would require more testing. Under these circumstances, we see no basis to conclude that the RFP was misleading or that it failed to put offerors on notice of the agency's actual requirements.

Also, we note that there is nothing in the record which shows that the Navy knew, prior to negotiations, how much retained hardware and software had already been developed and tested by Rockwell for this program. In this respect, the record shows that the agency specifically requested Rockwell during negotiations to indicate the amount of retained hardware and software it was offering. Consequently, we see no evidence that the agency actively induced Rockwell to submit a proposal for a requirement that it knew Rockwell had no realistic chance to win. Based on the record, we conclude that the agency's requirements were clearly stated and that the Navy's evaluation was conducted in accordance with the RFP's stated evaluation criteria.

Concerning Rockwell's allegation that meaningful discussions were not conducted, the essential purpose of discussions is to advise offerors of deficiencies in their proposals and give them an opportunity to revise their proposals. Datron Sys. Inc., B-220423 et al., Mar. 18, 1986, 86-1 CPD ¶ 264. Rockwell argues that the Navy's concerns regarding Rockwell's design, lack of retained hardware and software, level of effort and ability to meet the Navy's schedule were never communicated. Also, Rockwell states that it was never advised that its approach was considered risky. However, the

Navy never considered Rockwell's approach technically risky in the sense that it was not technologically feasible. The Navy believed that Rockwell could produce a fully compliant TSMT FES but that it would not be accomplished within the RFP's delivery schedule. Consequently, the Navy's major concern was whether Rockwell had sufficiently considered the delivery schedule in devising its approach and in our view, the Navy's specific question requesting Rockwell to identify how it intended to meet the government's delivery schedule put Rockwell on notice of the Navy's concern in this regard. Further, the Navy requested Rockwell to consider whether sufficient labor hours were allocated to cover any problems that might arise during development. The Navy did not specifically indicate that lack of retained hardware or software was a problem but, in our view, whether retained hardware or software was being offered is directly related to how Rockwell intended to meet the RFP's delivery schedule. The central concern was not that Rockwell's approach was unacceptable, but whether Rockwell could deliver a TSMT FES on schedule. Cf. E. H. Pechan & Assocs., Inc., B-221058, Mar. 20, 1986, 86-1 CPD ¶ 278. We believe that the Navy's discussion questions reasonably notified Rockwell of this central concern and we find Rockwell's allegation that meaningful discussions were not had without merit.

Accordingly, since we conclude that Rockwell was not denied a fair opportunity to compete for this requirement, we find that the Navy did not unreasonably exclude Rockwell from the competition so as to entitle the firm to the recovery of costs.

Misevaluation of Rockwell's Proposal

In addition to the issues already addressed, Rockwell alleges that it is entitled to a recovery of costs because of several other errors in the Navy's technical evaluation. Rockwell argues that the prototype it proposed should not have been evaluated as highly risky and that it was unfairly criticized for failing to have its prototype tested with the Navy's AN/BQQ-6 sonar system when the Navy has consistently denied it the opportunity to do so. Also Rockwell argues that it should not have been criticized for proposing a lengthy phase I design, that the agency misevaluated its proposal regarding the ordering of long lead parts, trade studies, and that the Navy erroneously determined that Rockwell proposed to deliver an EDM, rather than a production unit to the first delivery location. Further, Rockwell alleges that the Navy's cost realism analysis was improper.

The Navy has responded to the specific allegations and contends that there was a valid basis for each determination. The Navy also argues that Rockwell has not challenged a majority of the agencies criticisms so that even if we were to find the Navy's evaluation erroneous on these issues, Rockwell has not shown that it had a substantial chance for award so as to entitle the firm to the recovery of costs. The Navy indicates that Rockwell does not dispute the Navy's finding that there were so many substantial technical differences between the Raytheon and Rockwell proposals, that even if Rockwell successfully rebutted each of the determinations it contests, Raytheon still would have been considered substantially technically superior. The Navy notes that Rockwell received a significantly lower score in each of the technical evaluation factors, except the least important, and points out that it has not even questioned many of the management approach criticisms which constituted approximately 17 percent of the overall evaluation.

An unsuccessful offeror is entitled to recover proposal preparation expenses where the agency has acted arbitrarily and capriciously in evaluating the claimant's proposal and the claimant would have had a substantial chance for receiving the award but for the agency's improper actions. Centennial Computer Products, Inc.--Reconsideration and Claim for Proposal Preparation Costs, B-212979.3, Apr. 22, 1986, 65 Comp. Gen. ___, 86-1 CPD ¶ 389. The mere fact, however, that a proposal was technically acceptable is not sufficient to justify an award of costs where it can be determined that the firm had no colorable chance for the award.^{1/} General

^{1/} Rockwell argues that our decision in EHE National Health Serv., Inc., B-219361.2, Oct. 1, 1985, 65 Comp. Gen. ___, 85-2 CPD ¶ 362, establishes that a protester's consideration for award is sufficient to show that it had a substantial chance for receiving an award. In that case, however, we found that the procedures utilized by the agency were defective and would have recommended a resolicitation if it were practicable. We make no such determination here since we have found that the RFP clearly stated the agency's needs and that the RFP put offerors on notice of the evaluation factors which would be considered by the agency. The remaining issue, therefore, is solely whether the technical criticisms challenged by Rockwell warrant the payment of costs and we believe that under these circumstances, the protester must show that but for the alleged evaluation errors, it is likely that it would have received the award. In this respect, we point out that we have expressly
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Engineering and Machine Works, B-223929, Oct. 27, 1986, 86-2 CPD ¶ _____. Here, we believe that Rockwell has failed to make such a showing and indeed, we note that Rockwell has indicated that it would not have submitted a proposal based on its current understanding of the Navy's requirements. Rockwell has not challenged the agency's evaluation of Raytheon's proposal nor has the firm taken issue with the Navy's assessment of the substantial technical superiority of Raytheon's proposal. Although Rockwell argues that it was not fairly apprised of the agency's actual needs and was not afforded meaningful discussions, we have found these allegations without merit. We found that the solicitation was issued for more than a full scale development effort and that risk in meeting the Navy's delivery schedule was properly evaluated. While Rockwell takes issue with several other criticisms made by the Navy, we think that the record overwhelmingly shows that Raytheon's proposal clearly offered the most advantageous approach to the government in meeting the Navy's stated objectives within the timeframes set forth. Our review of the remaining allegations discloses nothing which would alter this determination and consequently, no useful purpose would be served by a detailed analysis of these issues.

Accordingly, Rockwell's claim for proposal preparation expenses is denied and in view of our findings above, we find no basis to award Rockwell its costs for filing and pursuing this claim.

The claim is denied.

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Harry R. Van Cleve
General Counsel

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considered and rejected Rockwell's allegations concerning the allegedly misleading RFP, the consideration of factors not stated in the RFP and the Navy's alleged failure to conduct meaningful discussions. In our view, Rockwell had a fair opportunity to compete and must show that the agency's evaluation errors denied the firm the award it was otherwise entitled.